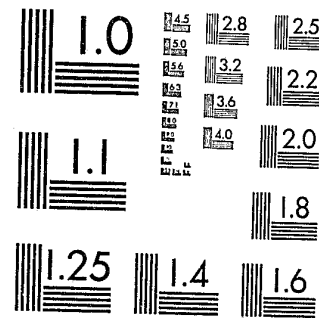


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12/9/82

# Federal Probation

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JUNE 1982

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

U.S. Department of Justice  
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All phases of preventive and correctional activities in delinquency and crime come within the fields of interest of FEDERAL PROBATION. The Quarterly wishes to share with its readers all constructively worthwhile points of view and welcomes the contributions of those engaged in the study of juvenile and adult offenders. Federal, state, and local organizations, institutions, and agencies—both public and private—are invited to submit any significant experience and findings related to the prevention and control of delinquency and crime.

Manuscripts (in duplicate), editorial matters, books, and communications should be addressed to FEDERAL PROBATION, Administrative Office of the United States Courts, Washington, D.C. 20544.

Subscriptions may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, at an annual rate of \$9.00 (domestic) and \$11.25 (foreign). Single copies are available at \$3.50 (domestic) and \$4.40 (foreign).

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FEDERAL PROBATION QUARTERLY

Administrative Office of the United States Courts, Washington, D.C. 20544

For sale by the Superintendent of Documents, U.S. Government Printing Office  
Washington, D.C. 20402

Federal Probation

A JOURNAL OF CORRECTIONAL PHILOSOPHY AND PRACTICE

Published by the Administrative Office of the United States Courts

VOLUME XXXXVI

JUNE 1982

NUMBER 2

This Issue in Brief

**Can Corrections Be Rehabilitated?**—During the last 30 years much progress has been made toward dissolving the barriers of hostility that generated violence and distrust between correctional staffs and prisoners. Because of forthcoming budgetary stringencies, rapidly increasing populations, and a vast increase in the level and frequency of violence, much of that progress is in danger of reversal. Author John Conrad feels it is urgently necessary to reduce prison intake by making maximum use of community-based corrections. He proposes a new model of sanctions that will be more severe than the present community corrections without resort to incarceration.

**"It Only Gets Worse When It's Better."**—This article by W. Clifford of the Australian Institute of Criminology, and the following article by Professor López-Rey of Cambridge, England, present two differing perspectives on world corrections. Mr. Clifford states that in the past 10 years regimes have changed or been overthrown, ideologies have been transformed, but corrections throughout the world has not changed all that much. Some of the older and outdated systems are yet 10 years more behind the times. In fact, he adds, corrections in its old form has a remarkable facility for surviving all kinds of revolutions and looking much the same afterwards.

**Crime, Criminal Justice, and Criminology: An Inventory.**—This article by Professor Manuel López-Rey attempts to demonstrate that crime is not an ensemble of behavioral problems but a sociopolitical phenomenon, that criminology should overcome excessive professional aims, and that criminal justice is increasingly unable everywhere to cope with the problem of crime, even within the limits of common crime.

**Adopting National Standards for Correctional Reform.**—The concept of correctional accreditation, according to Dale Sechrest and Ernest Reimer, is built on the foundation of humanitarian

reform of prison conditions through the application of standards of performance. A Commission on Accreditation for Corrections was formed in 1974. The Commission, using trained professionals, has accredited over 250 correctional agencies including 80 prisons, having a total involvement of over 500 correctional facilities and programs of all types.

**Volunteers in Criminal Justice: How Effective?**—The acceptance or rejection of the use of volunteers in justice settings has been based primarily on personal belief rather than on sound empirical evidence, assert authors Sigler and

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Leenhouts. While many volunteer programs have been evaluated, the results are questionable because of methodological errors. Two methodologically correct professional evaluations have indicated that volunteers are successful in working with justice system clients.

**Volunteers in Corrections: Do They Make a Meaningful Contribution?**—This article by Peter C. Kratoski examines the roles of volunteers in corrections in the past, the advantages and problems associated with using volunteers in a correctional setting, correctional agency administrators' and staff members' attitudes toward them, and the motivations and satisfactions of the volunteers. The findings of a study of the characteristics and motivations of a national sample of volunteers in probation are reported.

**A Delphi Assessment of the Effects of a Declining Economy on Crime and the Criminal Justice System.**—The research discussed in Professor Kevin Wright's article utilized the Delphi method of forecasting in order to obtain an initial and expedient answer to the question of what effect economic adversity will have on the incidence of crime and on the criminal justice system. Certain types of crime are expected to increase; however, an uncontrolled outbreak of crime is not predicted. Specific economic factors are identified as the primary producers of fluctuations in the incidence of crime. Some elements of the criminal justice system are expected to be burdened by economic decline.

**Presumptive Parole Dates: The Federal Approach.**—The procedure adopted by the United States Parole Commission to avoid unnecessary indeterminacy in making its determinations relative to prison confinement, while at the same time allowing for consideration of significant

changes in circumstances, is the focus of this article by Drs. Barbara Stone-Meierhoefer and Peter Hoffman. The presumptive parole date procedure implemented by the Parole Commission is described, and its relationship to the Commission's system of explicit guidelines for parole decision-making is discussed.

**Court—Prosecutor—Probation Officer: When Is Discretion Disparity in the Criminal Justice System?**—There is not yet in America any clear, consistent, rational policy regarding whether to pursue a correctional philosophy of rehabilitation or one of retribution. Former emphasis on treatment is being replaced by emphasis on punishment and uniformity of sentence. Supervising Probation Officer Robert L. Thomas believes traditional definitions of discretion and disparity are being prostituted to cover up the belated realization that after-the-fact solutions to crime do not work. What is really needed, he insists, is more realistic alternatives to traditional dispositions and a clearer understanding of who should or should not go to prison.

**Rekindling the Flame.**—The syndrome of burnout is a symptom of the crisis presently affecting the social service professions, asserts James O. Smith of the Pennsylvania Board of Probation and Parole. As such, the phenomenon presents both the danger of poorer quality services and, paradoxically, the opportunity for enhancement of services. Using as a general framework Maslow's hierarchy of human needs, this article maintains that through the medium of a comprehensive, in-service training program an organization can positively affect the "esteem needs" of its staff. The outcome of this relationship, as it is suggested, is higher quality service with less staff burnout.

All the articles appearing in this magazine are regarded as appropriate expressions of ideas worthy of thought but their publication is not to be taken as an endorsement by the editors or the Federal probation office of the views set forth. The editors may or may not agree with the articles appearing in the magazine, but believe them in any case to be deserving of consideration.

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# Presumptive Parole Dates: The Federal Approach

BY BARBARA STONE-MEIERHOEFER, Ph.D., AND PETER B. HOFFMAN, Ph.D.\*

**A**N OVERVIEW of the goals and structure of the U.S. Parole Commission's approach to parole release decisionmaking is presented in this article; and the relationship of this approach to the philosophical concerns of equity and determinacy is highlighted.<sup>1</sup>

The statute governing Federal parole release consideration sets forth the following criteria for parole release: (1) that an eligible prisoner has substantially observed the rules of the institution(s) to which he has been confined; (2) that release would not depreciate the seriousness of his offense or promote disrespect for the law; and (3) that release would not jeopardize the public welfare. In addition, the statute mandates the use of paroling policy guidelines as a flexible means of structuring decisionmaking discretion to provide equity among groups of similar offenders without removing the opportunity to consider individual case factors.<sup>2</sup>

In developing the guidelines and other rules and procedures to implement this statutory mandate, the Parole Commission has attempted to pursue three general objectives. First, the specific guidelines established must reflect the parole release criteria set forth in the statute. Second, to provide equity, the guidelines established must be sufficiently explicit and detailed to permit consistent decisionmaking among similarly situated offenders. Third, unnecessary uncertainty as to the date of the prisoner's eventual release is to be avoided through early notification of the tentative date of release from prison; yet this procedure must be flexible enough to permit modification of a release date should there be significant change in circumstances. The Parole Commission has attempted to reach these objectives through the development of a system of explicit guidelines for decisionmaking combined with a presumptive release date procedure.

\*Dr. Stone-Meierhoefer, research associate, Federal Judicial Center, was with the research unit of the U.S. Parole Commission when this article was written. Dr. Hoffman is research director, U.S. Parole Commission. Opinions expressed in this article do not represent statements of policy of either the Federal Judicial Center or its Board.

## *Setting a Presumptive Release Date*

The first stage of the decisionmaking process takes place within 120 days after incarceration when almost all Federal prisoners are eligible for an initial parole hearing.<sup>3</sup> At this hearing, the paroling policy guidelines are calculated, the case is assessed against these guidelines, and the prisoner is notified of a presumptive date of release.<sup>4</sup>

## *The Concern of Equity*

The paroling policy guidelines calculated at the initial hearing are an important tool in the overall parole decisionmaking process (see Appendix A).<sup>5</sup> These guidelines provide a scheme for classifying offenders into groups which are similar in relation to (1) the seriousness of the offense they committed; and (2) the risk of recidivism presented to society.

The determination of offense seriousness is accomplished with reference to a severity scale which classifies examples of common Federal offense behaviors into seven categories of seriousness. A "risk" of recidivism determination is then made with the aid of an actuarial device containing six items (primarily concerning prior criminal record) which, taken together, have been found to relate to the likelihood of recidivism. This device, known as the "salient factor score," is used to classify cases into one of four risk categories.<sup>6</sup> The guideline matrix then sets forth a customary range of months to be served in prison

<sup>1</sup>U.S. Parole Commission regulations are published at 28 C.F.R. §§2.1-2.60 (1981) (as amended by 46 Federal Register 35635-35640 (July 10, 1981)).

<sup>2</sup>18 U.S.C. §§4201 et seq. See particularly, 18 U.S.C. §§4203 and 4206.

<sup>3</sup>The procedures governing initial parole hearings are at 28 C.F.R. §2.12, 2.13 (1981). The exception to the early hearing provision of the presumptive date plan is that prisoners with minimum sentences of 10 years are not heard until just prior to their eligibility date. This stems from the regulation which prohibits the setting of a presumptive release date in excess of 10 years from the date of the hearing.

<sup>4</sup>The only prisoners not given a presumptive release date at the initial hearing are those for whom the Commission does not feel release within 10 years from the date of the hearing would be appropriate. These prisoners are continued for a 10-year reconsideration hearing at which all of the facts of the case are reevaluated against the guidelines calculated at the initial hearing for possible setting of a presumptive release date. It is to be noted that any presumptive release date must be set within the limits of the judicial sentence imposed (i.e., it may not be set earlier than the judicial minimum sentence, if any, nor later than the mandatory release date).

<sup>5</sup>28 C.F.R. §§2.20 and 2.21 as amended by 46 Federal Register 35635-35640 (July 10, 1981). For an overview of the development of the paroling policy guidelines, see: D.M. Gottfredson, L.T. Wilkins, and P.B. Hoffman, *Guidelines for Parole and Sentencing*, Lexington, MA: Lexington Books (1978).

<sup>6</sup>For a summary of the method used in construction and validation of the salient factor score, see: P.B. Hoffman and S. Adelberg, "The Salient Factor Score: A Non-Technical Overview," 44 FEDERAL PROBATION (1980) pp. 44-53.



for the applicable combination of offense severity and parole prognosis assessments. This guideline range presumes good institutional behavior.

Calculation of the appropriate guideline range is the necessary first step in decisionmaking; however, the actual release decision rests on an assessment of each individual prisoner's case against the guideline parameters. The guidelines do not prescribe the *only* factors which are to be taken into account at the initial parole hearing. Rather, they specify that offense severity and risk are primary factors that must be considered in every case. Other case-specific factors are then used to place the actual release decision at a point either within or outside of the appropriate guideline range. If the circumstances surrounding an individual case contain no substantial aggravating or mitigating circumstances, a decision within the guidelines will be chosen. If, however, there are significant aggravating or mitigating circumstances surrounding the case, departure from the guideline range—either above or below—would not only be permitted but would be called for.<sup>7</sup> When aggravating or mitigating factors sufficient to warrant a decision outside of the guideline range are found, specific written reasons for the departure must be provided.<sup>8</sup>

#### *The Concern of Determinacy*

The outcome of the initial parole hearing is the setting of a presumptive date of release, the aim of which is to place a particular offender in fair relation to other prisoners with respect to offense severity and risk of recidivism. This presumptive release date may be set up to 10 years from the date of the hearing, and may be either a presumptive parole date or a decision to continue the prisoner to the expiration of his/her sentence less institutional good time (when the prisoner's sentence is not long enough to accommodate the particular time-served decision deemed appropriate).<sup>9</sup> If confinement of more than 10 years is indicated, the prisoner will be rescheduled for a full reconsideration hearing in 10 years. Actual release upon the presumptive parole date is contingent upon maintenance of a good conduct record and development of an acceptable release plan.

<sup>7</sup>The U.S. Parole Commission's Procedures Manual (Appendix 4, Section V) provides examples of the more common factors which may warrant a decision outside the guidelines.

<sup>8</sup>18 U.S.C. 4206(c).

<sup>9</sup>When a prisoner is denied parole, this does not mean that he or she will serve the entire sentence imposed by the court in prison. Release from prison in the absence of parole is effected upon expiration of the full term sentence less statutory good time (up to 10 days a month) and earned extra good time (up to an additional 5 days a month). Upon release, a prisoner denied parole will be supervised as if on parole up to the full term date of the sentence (less 6 months).

<sup>10</sup>28 C.F.R. §2.14 (1981).

<sup>11</sup>28 C.F.R. §2.28 (1981).

By making a presumptive release decision early in the parole process, the prisoner is given certainty to the extent that a release date has been set which cannot be taken away except for specified reasons. However, the early notification provision also has the effect of limiting the information considered in making this initial decision to that which is known at the time of commitment. Those relevant release factors which come to light during the course of imprisonment are the focus of subsequent reviews.

#### *Modification of a Presumptive Release Date*

After a presumptive release date is set, there are two types of regularly scheduled parole considerations. First, approximately 6 months prior to a previously set presumptive parole date, a record review is conducted to ascertain whether or not the conditions of the presumptive date (i.e., satisfactory conduct and an acceptable release plan) have been met. Second, by statute, prisoners are given an in-prison parole review hearing every 18 months (prisoners with sentences of less than 7 years) or 24 months (prisoners with sentences of 7 years or more).<sup>10</sup> In addition to these regularly scheduled considerations, there is provision for the reopening of a case at any time upon receipt of new and significant information.<sup>11</sup>

Decisionmaking at these subsequent considerations focuses on whether there have been any changes in circumstances since the previous hearing significant enough to warrant a change in the presumptive release date. In designing the presumptive date process, the Commission has attempted to balance the sometimes competing aims of determinacy and equity. That is, allowance of any change in a presumptive date, by definition, decreases the certainty of the initial release decision. However, it is the Commission's position that offenders, through institutional behavior or other changes in circumstance, may need to be differentiated from those to whom they were considered "similar" when the presumptive date decision was originally made. It would therefore be inequitable if the previously set release date could not be adjusted to reflect these differences when they occur.

To consider all of the relevant information demanded by equity, while still eliminating unnecessary uncertainty, the Commission has specified the factors which may be relied upon to modify a presumptive date, and has established decisionmaking guidelines for the two most commonly occurring change factors: institutional misconduct and superior program achievement.

#### *Postponement of a Presumptive Date*

##### *Disciplinary Infractions*

As stated earlier, the Commission's paroling policy guidelines assume good conduct while confined. A record of serious disciplinary infractions does not meet this presumption, nor would it meet the statutory requirement that the Commission consider whether the prisoner has substantially obeyed the rules of the institution in which confined. Therefore, poor discipline is considered by the Commission as good cause to rescind a previously set presumptive parole date provided the infraction(s) has been adjudicated under the Bureau of Prison's Institutional Disciplinary Committee procedures.<sup>12</sup>

The purpose of the Commission's rescission guidelines (see Appendix B)<sup>13</sup> is to facilitate consistent decisionmaking in sanctioning rule infractions. These guidelines specify the customary period of prison time to be added to the original presumptive release date for prisoners who commit various types of disciplinary infractions. It should be noted that rescission guidelines only apply to those prisoners to whom the Commission has given a presumptive or effective date of parole. If the Commission has continued a prisoner to the expiration of his/her sentence less institutional good time, the sanctioning of disciplinary infractions is within the authority of the Bureau of Prisons which may take away the prisoner's institutional "good time" and, thus, delay the prisoner's mandatory release date.

The Parole Commission's rescission guidelines classify infractions into three categories. The first category, "administrative infractions," includes conduct prohibited by institutional rule, but which is not a criminal law violation.

A second category includes escape or attempted escape. The rescission penalty for escape depends on the type of institution from which the prisoner escaped and the length of time in escape status. The "escape" penalty is separate from that to be applied for any other criminal acts that may be committed during the escape.

A third category includes conduct which constitutes new criminal behavior (other than escape). A distinction is made as to whether the new criminal behavior occurred in an institutional setting, or whether it occurred while the prisoner was

actually in the community (e.g., on furlough, on work status from a community treatment center, or in escape status). In each case, the rescission penalty is determined by assessing the seriousness of the new criminal conduct using the severity scale of the paroling policy guidelines such that the more serious the rescission behavior, the more time is added to the previously set date. If the criminal behavior occurred while the prisoner was in the community, the risk of recidivism dimension (salient factor score) is also recalculated. The result is that the rescission guidelines for new offenses committed in the community call for the most additional prison time to be served.

##### *Failure To Establish a Suitable Release Plan*

A previously set presumptive parole date may also be retarded if the prisoner fails to establish an acceptable release plan. A release plan is initially proposed by the prisoner and his/her caseworker. It is then sent to the probation office located in the proposed area of release for verification of the details of the plan and the probation officer's recommendation as to its suitability. The plan is then submitted to the Parole Commission for approval. An acceptable plan will generally include a place to live and a place of employment (or schooling). If a prisoner has limited community resources, an effort is made to release such prisoner through a community treatment center (halfway house) for the purpose of obtaining employment and housing.

If an acceptable release plan has not been approved by the time of the parole date, the parole date may be retarded while efforts are made to secure an approved plan. If, after 120 days, the prisoner is still without an approved plan, a hearing must be held to discuss the problem and explore alternative solutions.<sup>14</sup> The case must then be reviewed at least every 30 days so that continuing efforts to secure release can be monitored.

Prior to actual release, the prisoner must sign the release certificate agreeing to the general, and any special, conditions of parole supervision. Failure to sign this certificate will result in waiver of parole.

##### *New Adverse Information*

A presumptive parole date is given under the assumption that all relevant information is known and has been accurately presented to the Commission. If any significant information adverse to the prisoner comes to the attention of the Commission subsequent to the granting of a presumptive date, the case may be reopened for another hearing from which a more adverse parole decision may result.<sup>15</sup>

<sup>12</sup>28 C.F.R. §2.34 (1981). The Bureau of Prisons may handle disciplinary infractions in an informal manner (through which only minor sanctions may be imposed) or may refer consideration of infractions to an Institutional Disciplinary Committee hearing. Only the latter method of adjudicating infractions provides the standard of due process required of the Parole Commission when considering rescission of a parole date.

<sup>13</sup>28 C.F.R. §2.36 (1981).

<sup>14</sup>28 C.F.R. §2.12 (d) and 2.28 (e) (1981).

<sup>15</sup>28 C.F.R. §2.28 (c), (d), and (f) (1981).

### Advancement of a Presumptive Date

#### Superior Program Achievement

In addition to assuming good conduct, the paroling policy guideline range also assumes good program performance. However, where a prisoner subsequently demonstrates exceptional positive institutional achievements over a sustained period of time, the previously set presumptive date may be reduced according to a schedule of limited rewards under the superior program achievement guidelines (see Appendix C).<sup>16</sup>

The superior achievement guidelines provide a specified normal maximum limit (in months) by which a previously set presumptive date may be advanced. This maximum limit is purposely kept small so as not to reintroduce the gross uncertainty which the presumptive date system was designed to eliminate. Additionally, keeping the potential reward small reduces the likelihood of prisoners participating superficially in programs merely to impress the Parole Commission in the hope of obtaining a substantially earlier release date.<sup>17</sup> By limiting the impact of positive institutional achievements, the Commission is also stating a philosophical position that, although positive institutional behavior is appropriately considered in making the ultimate release decision, considerations of offense severity and risk should remain primary.

The objective of the superior program achievement guidelines is to specify small but meaningful incentives to reward prisoners who choose to spend their prison time in an exceptionally constructive manner. While in some respects the superior program achievement guidelines represent the counterpart to the rescission guidelines, there are several important differences between the two.

First, the size of the potential reductions is tied to the total length of prison time to be served as established by the original presumptive date. This tie is important because the perceived size of the

reward is, of course, relative. For example, in light of the above discussion a potential 6-month reduction may seem an appropriate incentive for a prisoner with a 50-month presumptive date. But the same potential 6-month reduction would appear excessive for a prisoner with a 12-month presumptive date. This relationship between the superior program achievement guidelines and the length of time required by the original presumptive date is in contrast to the structure of the rescission guidelines, which set customary penalties for specific misconducts to be served in addition to, and independent of, the length of time required by the previously set presumptive date.

Second, the superior program achievement standards state that accomplishments in any area of activity or job performance can be considered, and that a clear conduct record is, in itself, not sufficient. The guidelines do not, however, describe the specific types of behavior which can be considered by the Commission to be "superior." To do this would be an overwhelming task because the definition of what is considered "superior program achievement" for one prisoner may not be considered "superior" for another. Prisoners enter the Federal prison system with a wide array of talents and weaknesses. To complete five college courses while in prison may not be that exceptional for a prisoner who already has a law degree. However, this accomplishment may indeed be considered "superior" for a prisoner who previously has been unable to succeed in the educational system.

Therefore, application of the superior program achievement guidelines involves a substantial amount of subjective judgment. Yet, by limiting the maximum amount of time to be awarded, potential inconsistency is minimized; and program participation, while encouraged, is not coerced.

#### Other Exceptional Circumstances

In addition, a previously set presumptive date may be reduced for other exceptional factors such as severely deteriorating health; isolated acts of unusual responsibility or courage, which though not "sustained" nonetheless merit recognition (e.g., helping others during a fire); or the receipt of new favorable information concerning the circumstances of the case not previously known.<sup>18</sup>

#### Summary

The U.S. Parole Commission's procedures have evolved over the years from a system which a decade ago made parole decisions on a case by case basis with essentially no structure, through a

period where structure was developed for paroling decisions in the form of paroling policy guidelines, to the current system which combines the use of guidelines with the setting of presumptive dates.

Throughout this evolution, a change in one part of the process has allowed for or necessitated changes in other parts of the system. The development of guidelines based on preincarceration factors allowed the development of the presumptive date procedures. Presumptive date procedures, in turn, necessitated a restructuring of the process used to consider institutional (and other postincarceration) factors in the release decision.

The current Federal parole procedures have developed in a piecemeal fashion. Yet what has

emerged is a conceptually simple system which provides for the early setting of a tentative date of release based on factors known at the time of commitment (offense severity and risk assessment) with provision for the modification of that release date based on factors of significance which become known during the period of confinement (e.g., retardation for disciplinary infractions; advancement for exceptionally positive accomplishments). Furthermore, the system is designed to contain sufficient structure to provide consistent decision-making for similarly situated offenders, yet to be flexible enough to accommodate significant differences among individual offenders.

### APPENDIX A GUIDELINES FOR DECISIONMAKING

Effective 9/1/81

[Guidelines for Decisionmaking, Customary Total Time to be Served before Release (including jail time)]

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
<b>LOW</b> Alcohol or Cigarette law violations, including tax evasion (amount of tax evaded less than \$2,000) <sup>1</sup> Gambling law violations (no managerial or proprietary interest) Illicit drugs, simple possession Marihuana/hashish, possession with intent to distribute/sale [very small scale (e.g., less than 10 lbs. of marihuana/less than 1 lb. of hashish/less than .01 liter of hash oil)] Property offenses (theft, income tax evasion, or simple possession of stolen property) less than \$2,000	<p style="text-align: center;"><b>ADULT RANGE</b></p> <p style="text-align: center;">&lt;= 6 months      6-9 months      9-12 months      12-16 months</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><b>(YOUTH RANGE)</b></p> <p style="text-align: center;">(&lt;= 6) months      (6-9) months      (9-12) months      (12-16) months</p>			

<sup>16</sup>28 C.F.R. §2.60 (1981). It should also be noted that the Parole Commission does not punish lack of program achievement. The previously set presumptive date sets the outside release decision assuming the discipline and release plan conditions are met. However, a prisoner, while incarcerated, may not remain idle. In addition to elective activities, a prisoner is required to perform a job assignment within the prison. A prisoner's refusal to work may be cited as a disciplinary infraction. If serious enough to be referred by the Bureau of Prisons to an Institutional Disciplinary Committee, the Parole Commission may consider this behavior under its rescission guidelines for administrative infractions.

<sup>17</sup>While the Commission is cognizant of the potential for problems with "game-playing," it is believed that this potential is much reduced under the now published procedures of Federal parole decisionmaking which allocates only limited weight to institutional program participation. Furthermore, the atmosphere which gave rise to the initial critiques of consideration of program participation in release decision-making was one where prisoners were given virtually no idea of when they might be paroled until right before their actual release. In addition, no specific criteria were published and available as to how parole decisions were actually being made. This informational vacuum is not present in current Federal parole procedures.

<sup>18</sup>28 C.F.R. §§2.14 (a)(2)(ii) and 2.28 (a) (1981).

## FEDERAL PROBATION

APPENDIX A (Continued)  
GUIDELINES FOR DECISIONMAKING

Effective 9/1/81

[Guidelines for Decisionmaking, Customary Total Time to be Served before Release (including jail time)]

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
<b>LOW MODERATE</b> Counterfeit currency or other medium of exchange [(passing/possession) less than \$2,000] Drugs (other than specifically categorized), possession with intent to distribute/sale [very small scale (e.g., less than 200 doses)] Marihuana/hashish, possession with intent to distribute/sale [small scale (e.g., 10-49 lbs. of marihuana/1-4.9 lbs. of hashish/.01-.04 liters of hash oil)] Cocaine, possession with intent to distribute/sale [very small scale (e.g., less than 1 gram of 100% purity, or equivalent amount)] Gambling law violations—managerial or proprietary interest in small scale operation [e.g., Sports books (estimated daily gross less than \$5,000); Horse books (estimated daily gross less than \$1,500); Numbers bankers (estimated daily gross less than \$750)] Immigration law violations Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than \$2,000	ADULT RANGE			
	<= 8 months	8-12 months	12-16 months	16-22 months
	(YOUTH RANGE)			
	(<= 8) months	(8-12) months	(12-16) months	(16-20) months

## PRESUMPTIVE PAROLE DATES: THE FEDERAL APPROACH

APPENDIX A (Continued)  
GUIDELINES FOR DECISIONMAKING

Effective 9/1/81

[Guidelines for Decisionmaking, Customary Total Time to be Served before Release (including jail time)]

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
<b>MODERATE</b> Automobile theft (3 cars or less involved and total value does not exceed \$19,999) <sup>2</sup> Counterfeit currency or other medium of exchange [(passing/possession) \$2,000—\$19,999] Drugs (other than specifically categorized), possession with intent to distribute/sale [small scale (e.g., 200-999 doses)] Marihuana/hashish, possession with intent to distribute/sale [medium scale (e.g., 50-199 lbs. of marihuana/5-19.9 lbs. of hashish/.05-.19 liters of hash oil)] Cocaine, possession with intent to distribute/sale [small scale (e.g., 1.0-4.9 grams of 100% purity, or equivalent amount)] Opiates, possession with intent to distribute/sale [evidence of opiate addiction and very small scale (e.g., less than 1.0 grams of 100% pure heroin, or equivalent amount)] Firearms Act, possession/purchase/sale (single weapons: not sawed-off shotgun or machine gun) Gambling law violations—managerial or proprietary interest in medium scale operation [e.g., Sports books (estimated daily gross \$5,000-\$15,000); Horse books (estimated daily \$1,500-\$4,000); Numbers bankers (estimated daily gross \$750-\$2,000)] Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) \$2,000-\$19,999 Smuggling/transporting of alien(s)	ADULT RANGE			
	10-14 months	14-18 months	18-24 months	24-32 months
	(YOUTH RANGE)			
	(8-12) months	(12-16) months	(16-20) months	(20-26) months



FEDERAL PROBATION  
APPENDIX A (Continued)  
GUIDELINES FOR DECISIONMAKING  
Effective 9/1/81

[Guidelines for Decisionmaking, Customary Total Time to be Served before Release (including jail time)]

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
HIGH Carnal Knowledge <sup>3</sup> Counterfeit currency or other medium of exchange [(passing/possession) \$20,000—\$100,000] Counterfeiting [manufacturing (amount of counterfeit currency or other medium of exchange involved not exceeding \$100,000)] Drugs (other than specifically listed), possession with intent to distribute/sale [medium scale (e.g., 1,000-19,999 doses)] Marihuana/hashish, possession with intent to distribute/sale [large scale (e.g., 200-1,999 lbs. of marihuana/20-199 lbs. of hashish/.20-1.99 liters of hash oil)] Cocaine, possession with intent to distribute/sale [medium scale (e.g., 5-99 grams of 100% purity, or equivalent amount)] Opiates, possession with intent to distribute/sale [small scale (e.g., less than 5 grams of 100% pure heroin, or equivalent amount) except as described in moderate] Firearms Act, possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons) Gambling law violations—managerial or proprietary interest in large scale operation (e.g., Sports books (estimated daily gross more than \$15,000); Horse books (estimated daily gross more than \$4,000); Numbers bankers (estimated daily gross more than \$2,000)] Involuntary manslaughter (e.g., negligent homicide)	ADULT RANGE  14-20 months      20-26 months      26-36 months      34-44 months			
	(YOUTH RANGE)  (12-16) months      (16-20) months      (20-26) months      (26-32) months			

APPENDIX A (Continued)  
GUIDELINES FOR DECISIONMAKING  
Effective 9/1/81

[Guidelines for Decisionmaking, Customary Total Time to be Served before Release (including jail time)]

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
HIGH (Continued) Mann Act (no force—commercial purposes) Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) \$20,000—\$100,000 Threatening communications (e.g., mail/phone)—not for purposes of extortion and no other overt act				
VERY HIGH Robbery (1 or 2 instances) Breaking and entering—armory with intent to steal weapons Breaking and entering/burglary—residence; or breaking and entering of other premises with hostile confrontation with victim Counterfeit currency or other medium of exchange [(passing/possession/manufacturing)/amount more than \$100,000 but not exceeding \$500,000] Drugs (other than specifically listed), possession with intent to distribute/sale [large scale (e.g., 20,000 or more doses) except as described in Greatest I] Marihuana/hashish, possession with intent to distribute/sale [very large scale (e.g., 2,000 lbs. or more of marihuana/200 lbs. or more of hashish/2 liters or more of hash oil)] Cocaine, possession with intent to distribute/sale [large scale (e.g., 100 grams or more of 100% purity, or equivalent amount) except as described in Greatest I]	ADULT RANGE  24-36 months      36-48 months      48-60 months      60-72 months			



FEDERAL PROBATION  
APPENDIX A (Continued)  
GUIDELINES FOR DECISIONMAKING  
Effective 9/1/81

[Guidelines for Decisionmaking, Customary Total Time to be Served before Release (including jail time)]

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
VERY HIGH (Continued) Opiates, possession with intent to distribute/sale [medium to a very large scale (e.g., 5 grams or more of 100% pure heroin, or equivalent amount) unless the offense is described in Greatest I or Greatest II] Extortion [threat of physical harm (to person or property)] Explosives, possession/transportation Property offenses (theft/forgery/fraud/ embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) more than \$100,000 but not exceeding \$500,000	(YOUTH RANGE)			
	(20-26) months	(26-32) months	(32-40) months	(40-48) months
GREATEST I Aggravated felony (e.g., robbery: weapon fired or injury of a type normally requiring medical attention) Arson or explosive detonation [involving potential risk of physical injury to person(s) (e.g., premises occupied or likely to be occupied)—no serious injury occurred] Drugs (other than specifically listed), possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 200,000 doses)] Cocaine, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 1 kilogram of 100% purity, or equivalent amount)]	ADULT RANGE			
	40-52 months	52-64 months	64-78 months	78-100 months

APPENDIX A (Continued)  
GUIDELINES FOR DECISIONMAKING  
Effective 9/1/81

[Guidelines for Decisionmaking, Customary Total Time to be Served before Release (including jail time)]

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1981)			
	Very Good (10-8)	Good (7-6)	Fair (5-4)	Poor (3-0)
GREATEST (Continued) Opiates, possession with intent to distribute/sale [managerial or proprietary interest and large scale (e.g., offense involving more than 50 grams but not more than 1 kilogram (1000 grams) of 100% pure heroin or equivalent amount)] Kidnaping [other than listed in Greatest II; limited duration; and no harm to victim (e.g., kidnaping the driver of a truck during a hijacking, driving to a secluded location, and releasing victim unharmed)] Robbery (3 or 4 instances) Sex act—force (e.g., forcible rape or Mann Act (force))	(YOUTH RANGE)			
	(30-40) months	(40-50) months	(50-60) months	(60-76) months
GREATEST II Murder Voluntary manslaughter Aggravated felony—serious injury (e.g., robbery: injury involving substantial risk of death or protracted disability, or disfigurement) or extreme cruelty/brutality toward victim Aircraft hijacking Espionage Kidnaping (for ransom or terrorism; as hostage; or harm to victim) Treason Opiates, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 1 kilogram (1000 grams) of 100% pure heroin or equivalent amount)]	ADULT RANGE			
	52+ months	64+ months	78+ months	100+ months
	.....			
	(YOUTH RANGE)			
	(40+ ) months	(50+ ) months	(60+ ) months	(76+ ) months
	Specific upper limits are not provided due to the limited number of cases and the extreme variation possible within category.			

## GENERAL NOTES

- A. These guidelines are predicated upon good institutional conduct and program performance.
- B. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.
- C. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
- D. If an offense behavior involved multiple separate offenses, the severity level may be increased.
- E. In cases where multiple sentences have been imposed (whether consecutive or concurrent, and whether aggregated or not) an offense severity rating shall be established to reflect the overall severity of the underlying criminal behavior. This rating shall apply whether or not any of the component sentences has expired.

## OTHER OFFENSES

- (1) Conspiracy shall be rated for guideline purposes according to the underlying offense behavior if such behavior was consummated. If the offense is unsummated, the conspiracy will be rated one step below the consummated offense. A consummated offense includes one in which the offender is prevented from completion only because of the intervention of law enforcement officials.
- (2) Breaking and entering not specifically listed above shall normally be treated as a low moderate severity offense; however, if the monetary loss amounts to \$2,000 or more, the applicable property offense category shall be used. Similarly, if the monetary loss involved in a burglary or breaking and entering (that is listed) constitutes a more serious property offense than the burglary or breaking and entering itself, the appropriate property offense category shall be used.
- (3) Manufacturing of synthetic drugs for sale shall be rated as not less than very high severity.
- (4) Bribery of a public official (offering/accepting/soliciting) or extortion (use of official position) shall be rated as no less than moderate severity for those instances limited in scope (e.g., single instance and amount of bribe/demand less than \$20,000 in value);

and shall be rated as no less than high severity in any other case. In the case of the bribe/demand with a value in excess of \$100,000, the applicable property offense category shall apply. The extent to which the criminal conduct involves a breach of the public trust, therefore causing injury beyond that describable by monetary gain, shall be considered as an aggravating factor.

- (5) Obstructing justice (no physical threat)/perjury (in a criminal proceeding) shall be rated in the category of the underlying offense concerned, except that obstructing justice (threat of physical harm) shall be rated as no less than very high severity.
- (6) Misprision of felony shall be rated as moderate severity if the underlying offense is high severity or above. If the underlying offense is moderate severity or less, it shall be rated as low severity.
- (7) Harboring a fugitive shall be rated as moderate severity if the underlying offense is high severity or above. If the underlying offense is moderate severity or less, it shall be rated as low severity.

## REFERENCED NOTES

1. Alcohol or cigarette tax law violations involving \$2,000 or more of evaded tax shall be treated as a property offense (tax evasion).
2. Except that automobile theft (not kept more than 72 hours; no substantial damage; and not theft for resale) shall be rated as low severity. Automobile theft involving a value of more than \$19,999 shall be treated as a property offense. In addition, automobile theft involving more than 3 cars, regardless of value, shall be treated as no less than high severity.
3. Except that carnal knowledge in which the relationship is clearly voluntary, the victim is not less than 14 years old, and the age difference between offender and victim is less than four years shall be rated as a low severity offense.

## DEFINITIONS

- a. 'Other media or exchange' include, but are not limited to, postage stamps, money orders, or coupons redeemable for cash or goods.
- b. 'Drugs, other than specifically categorized' include, but are not limited to, the following, listed in ascending

order of their perceived severity: amphetamines, hallucinogens, barbiturates, methamphetamines, phenylcyclidine (PCP). This ordering shall be used as a guide to decision placement within the applicable guideline range (i.e., other aspects being equal, amphetamines will normally be rated towards the bottom of the guideline range and PCP will normally be rated towards the top).

- c. 'Equivalent amounts' for the cocaine and opiate categories may be computed as follows: 1 gm. of 100% pure is equivalent to 2 gms. of 50% pure and 10 gms. of 10% pure, etc.
- d. The 'opiate' category includes heroin,

morphine, opiate derivatives, and synthetic opiate substitutes.

- e. Managerial/Proprietary Interest (Large Scale Drug Offenses):

Managerial/proprietary interest in large scale drug cases is defined to include offenders who sell or negotiate to sell such drugs; or who have decision-making authority concerning the distribution/sale, importation, cutting, or manufacture of such drugs; or who finance such operations. Cases to be excluded are peripherally involved offenders without any decision-making authority (e.g., a person hired merely as a courier).

## Salient Factor Score (SFS 81)

Register Number \_\_\_\_\_ Name \_\_\_\_\_

Item A: PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE) ..... ☐

None ..... = 3  
One ..... = 2  
Two or three ..... = 1  
Four or more ..... = 0

Item B: PRIOR COMMITMENT(S) OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE) ... ☐

None ..... = 2  
One or two ..... = 1  
Three or more ..... = 0

Item C: AGE AT CURRENT OFFENSE/PRIOR COMMITMENTS ..... ☐

Age at commencement of the current offense:  
26 years of age or more ..... = 2 \*\*\*  
20-25 years of age ..... = 1 \*\*\*  
19 years of age or less ..... = 0

\*\*\*EXCEPTIONS: If five or more prior commitments of more than thirty days (adult or juvenile), place an "x" here \_\_\_\_\_ and score this item. .... = 0.

Item D: RECENT COMMITMENT FREE PERIOD (THREE YEARS) ..... ☐

No prior commitment of more than thirty days (adult or juvenile) or released to the community from last such commitment at least three years prior to the commencement of the current offense ..... = 1  
Otherwise ..... = 0



Item E: PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME . ☐

Neither on probation, parole, confinement, or escape status at the time of the current offense; nor committed as a probation, parole, confinement, or escape status violator this time ..... = 1

Otherwise..... = 0

Item F: HEROIN/OPIATE DEPENDENCE ..... ☐

No history of heroin/opiate dependence ..... = 1

Otherwise..... = 0

TOTAL SCORE ..... ☐

NOTE: For purposes of the Salient Factor Score, an instance of criminal behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be treated as a conviction, even if a conviction is not formally entered.

Sec. 2.21 REPAROLE CONSIDERATION GUIDELINES.

(a) If revocation is based upon administrative violation(s) only [i.e., violations other than new criminal conduct] the following guidelines shall apply.

Positive Supervision History: (Examples)

Customary Time to be Served Before Rerelease

- a. No serious alcohol/drug abuse and no possession of weapon(s) [and]
- b. At least 8 months from date of release to date of violation behavior [and]
- c. Present violation represents first instance of failure to comply with parole regulations of this term.

< 6 Months

Negative Supervision History: (Examples)

- a. Serious alcohol/drug abuse (e.g., readdiction to opiates) or possession of weapon(s) [or]
- b. Less than 8 months from date of release to date of violation behavior [or]
- c. Repetitious or persistent violations.

6 - 9 Months

(b)(1) If a finding is made that the prisoner has engaged in behavior constituting new criminal conduct, the appropriate severity rating for the new criminal behavior shall be calculated. New criminal conduct may be determined either by a new federal, state, or local conviction or by an independent finding by the Commission at revocation hearing. As violations may be for state or local offenses, the appropriate severity level may be determined by analogy with listed federal offense behaviors.

(2) The guidelines for parole consideration specified at 28 C.F.R. Sec. 2.20 shall then be applied. The original guideline type (e.g., adult, youth) shall determine the applicable guidelines for the parole violator term, except that a violator committed with a new federal sentence of more than one year shall be treated under the guideline type applicable to the new sentence.

(3) Time served on a new state or federal sentence shall be counted as time in custody for reparole guideline purposes. This does not affect the computation of the expiration date of the violator term as provided by Sections 2.47(b) and 2.52(c) and (d).

(c) The above are merely guidelines. A decision outside these guidelines (either above or below) may be made when circumstances warrant. For example, violations of an assaultive nature or by a person with a history of repeated parole failure may warrant a decision above the guidelines. Minor offense(s) (e.g., minor traffic offenses, vagrancy, public intoxication) shall normally be treated under administrative violations.

APPENDIX B

Sec. 2.36 RECISSION GUIDELINES.

(a) The following guidelines shall apply to the sanctioning of disciplinary infractions or new criminal behavior committed by a prisoner subsequent to the commencement of his sentence and prior to his release on parole. These guidelines specify the customary time to be served for such behavior which shall be added to the time required by the original presumptive or effective date. Credit shall be given towards service of these guidelines for any time spent in custody on a new offense that has not been credited towards service of the original presumptive or effective date. If a new concurrent or consecutive sentence is imposed for such behavior, these guidelines shall also be applied at the initial hearing on such terms.

(1) ADMINISTRATIVE RULE INFRACTION(S) (including drug/alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0-60 days per instance of misconduct. Escape or other new criminal conduct shall be considered in accordance with the guidelines set forth below.

(2) ESCAPE/NEW CRIMINAL BEHAVIOR IN A PRISON FACILITY (including a Community Treatment Center). The time required pursuant to the guidelines set forth in (i) and (ii) below shall be added to the time required by the original presumptive or effective date.

(i) Escape or Attempted Escape Without Force or Threat

- |  |             |
|--|-------------|
| (A) Non-Secure Facility or Program (absent less than 7 days)   | 3-6 months  |
| (B) Secure Facility (no force or threat used); or Non-Secure Facility or Program (absent 7 days or more) | 6-12 months |

Notes: (1) If other criminal conduct is committed during the escape or during time spent in escape status, then time to be served for the escape/attempted escape shall be added to that assessed for the other new criminal conduct.

(2) Time in escape status shall not be credited.

(ii) *Other New Criminal Behavior in a Prison Facility*

<i>Severity Rating of the New Criminal Behavior (from § 2.20)</i>	<i>Adult Cases</i>	<i>Youth/NARA Cases</i>
Low	<= 6 months	<= 6 months
Low Moderate	<= 8 months	<= 8 months
Moderate	10-14 months	8-12 months
High	14-20 months	12-16 months
Very High	24-36 months	20-26 months
Greatest I	40-52 months	30-40 months
Greatest II	52 + months	40 + months

(3) NEW CRIMINAL BEHAVIOR IN THE COMMUNITY (e.g., while on pass, furlough, work release, or on escape). In such cases, the guidelines applicable to reparable violators under § 2.21 shall be applied, using the new offense severity (from § 2.20) and recalculated salient factor score (such score shall be recalculated as if the prisoner had been on parole at the time of the new criminal behavior). The time required pursuant to these guidelines shall be added to the time required by the original presumptive or effective date.

(b) The above are merely guidelines. Where the circumstances warrant, a decision outside the guidelines (above or below) may be rendered provided specific reasons are given. For example, a substantial period of good conduct since the last disciplinary infraction in cases not involving new criminal conduct may be treated as a mitigating circumstance.

## APPENDIX C

## Sec 2.60 SUPERIOR PROGRAM ACHIEVEMENT.

(a) Prisoners who demonstrate superior program achievement (in addition to a good conduct record) may be considered for a limited advancement of the presumptive date previously set according to the schedule below. Such reduction will normally be considered at an interim hearing or pre-release review. It is to be stressed that a clear conduct record is expected; this reduction applies only to cases with documented sustained superior program achievement over a period of 9 months or more in custody.

(b) Superior program achievement may be demonstrated in areas such as educational, vocational, industry, or counselling programs, and is to be considered in light of the specifics of each case.

(c) Upon a finding of superior program achievement, a previously set presumptive date may be advanced. The normal maximum advancement permissible for superior program achievement during the prisoner's entire term shall be as set forth in the following schedule. It is the intent of the Commission that the maximum be exceeded only in the most clearly exceptional cases.

(d) Partial advancements may be given [for example, a case with superior program achievement during only part of the term or a case with both superior program achievement and minor disciplinary infraction(s)]. Advancements may be given at different times; however, the limits set forth in the following schedule shall apply to the total combined advancement.

## (e) Schedule of Permissible Reductions for Superior Program Achievement.

<i>Total months required by original presumptive date:</i>	<i>Permissible reduction</i>
14 months or less	Not applicable.
15 to 22 months	Up to 1 month.
23 to 30 months	Up to 2 months.
31 to 36 months	Up to 3 months.
37 to 42 months	Up to 4 months.
43 to 48 months	Up to 5 months.
49 to 54 months	Up to 6 months.
55 to 60 months	Up to 7 months.
61 to 66 months	Up to 8 months.
67 to 72 months	Up to 9 months.
73 to 78 months	Up to 10 months.
79 to 84 months	Up to 11 months.
85 to 90 months	Up to 12 months.
91 plus months	Up to 13 months.

Plus up to 1 additional month for each 6 months or fraction thereof, by which the original date exceeds 96 months.



**END**